Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Connect America Fund	)	**WC Docket No. 10-90**
	)	

COMMENTS OF
ITTA – THE VOICE OF AMERICA'S BROADBAND PROVIDERS

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COMMENTS OF ITTA – THE VOICE OF AMERICA'S BROADBAND PROVIDERS

ITTA – The Voice of America's Broadband Providers (ITTA) hereby submits these comments in response to the Wireline Competition Bureau's (Bureau) *June 2019 PN* seeking comment on approaches to identify and resolve discrepancies between the number of Alternative Connect America Cost Model (A-CAM) funded locations that A-CAM I and II support recipients are expected to serve (funded locations) and the actual number of locations that support recipients can serve (actual locations).[1]

I. INTRODUCTION AND SUMMARY

ITTA appreciates the Commission having heeded industry's "on the ground" observations that there frequently are disparities between the number of model-funded locations and actual deployable locations. The Commission already has clarified in the Connect America Fund Phase II (Phase II) auction context that it would accommodate this reality by adjusting an auction winner's deployment obligations, where necessary, commensurate with the shortfall in actual locations.[2] Subsequently, the Bureau sought comment on proposals to implement a

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[1] *Wireline Competition Bureau Issues Corrected Alternative Connect America Model II Offers to 37 Companies, Extends the Election Deadline, and Seeks Comment on Location Adjustment Procedures*, Public Notice, DA 19-504, at 2 (WCB June 5, 2019) (*June 2019 PN)*.

[2] *See Connect America Fund et al.*, Order on Reconsideration, 33 FCC Rcd 1380, 1389-90, paras. 23-25 (2018) (*Phase II Auction Reconsideration Order*) (citing, *inter alia*, Letter from Michael J. Jacobs, Vice President, Regulatory Affairs, ITTA, to Marlene H. Dortch, Secretary,

(continued…)

process for resolving location discrepancies at issue for Phase II auction support recipients.[3] These implementation proposals remain pending.

Recognizing that location discrepancy issues are also present for recipients of A-CAM I support (and are likely to be for A-CAM II support recipients), the Bureau now seeks comment on approaches to identify and resolve discrepancies between the number of model-funded A-CAM I and II locations and the actual number of locations that A-CAM support recipients can serve. The Bureau specifically asks whether the procedures proposed with respect to Phase II auction support recipients would be appropriate for A-CAM support recipients, and where not, what changes would be necessary to make those procedures appropriate for A-CAM recipients.[4]

There are several important ways in which A-CAM support recipients differ from Phase II auction winners that require the Commission's approach to location discrepancies to depart from what was proposed in the *September 2018 PN* relative to Phase II auction support recipients. First, A-CAM support recipients are subject to buildout terms of 10-12 years, whereas Phase II auction winners have six years for buildout. Second, whereas Phase II auction winners were afforded the opportunity to pick and choose among eligible census blocks or census block groups in a state, carriers that elected to participate in the A-CAM program had to choose the entirety of their service areas in states where they receive A-CAM support. For A-CAM support recipients, however, this is not a begrudging choice. They are incumbent local exchange carriers that long have been deploying broadband with the goal of reaching all consumers in their service territories.

(Continued from previous page)
FCC, WC Docket Nos. 10-90, 14-58, 14-259, and AU Docket No. 17-182 (filed Jan. 19, 2018) (ITTA et al. Jan. 19, 2018 *Ex Parte*)).

[3] *Wireline Competition Bureau Seeks Comment on Procedures to Identify and Resolve Location Discrepancies in Eligible Census Blocks Within Winning Bid Areas*, Public Notice, 33 FCC Rcd 8620 (WCB 2018) (*September 2018 PN*).

[4] *See June 2019 PN* at 2-3.

Rather than a one-time opportunity, ostensibly within a year after deployment obligations are defined, to bring to the Commission's attention any discrepancies between the number of funded locations and the number of actual locations,[5] A-CAM support recipients should have the flexibility to bring location discrepancies to the Commission when they are further along in their broadband deployment schedule. In addition, the Commission should study the impact of actual location discrepancies before deciding what measures are appropriate for A-CAM I and A-CAM II support recipients that experience location shortfalls. The Commission also should reiterate that its primary goal in this proceeding is to equitably address location discrepancies that occur in the A-CAM I and A-CAM II context, not to impose penalties for deployment shortfalls that result from location discrepancies in those programs.

II. WHERE THERE IS A DISCREPANCY BETWEEN A-CAM FUNDED AND ACTUAL LOCATIONS, THE COMMISSION SHOULD STUDY THE IMPACT BEFORE DECIDING WHAT MEASURES ARE APPROPRIATE TO ADDRESS THE ISSUE

The Commission has directed the Bureau to reduce support on a pro rata basis in the event of a Phase II auction support recipient encountering a location discrepancy and the *September 2018 PN* proposes various measures for implementing such reduction.[6] For numerous reasons, the same directive is not appropriate where recipients of A-CAM support find location discrepancies.

As an initial matter, unlike in the Phase II auction context, the Commission never has specified that an A-CAM recipient's location shortfall would lead to a pro rata reduction of A-CAM support. What the Commission did state was that, in such situations, the Bureau is

[5] In the case of the Phase II auction, the Commission stated that a recipient seeking an adjustment of deployment obligations would have one year to submit evidence of the total number of locations it could identify in the eligible areas in the state. *See Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1389, para. 23.

[6] *See September 2018 PN* at 8628, para. 24 (citing *Phase II Reconsideration Order*, 33 FCC Rcd at 1389, para. 24 n.62).

delegated authority "to address these discrepancies by adjusting the number of funded locations downward and reducing associated funding levels."[7] This formulation allows for much more flexibility.

A pro rata reduction in support would greatly exceed the actual per-location deployment costs, because the vast majority of deployment costs are devoted to the broadband network as a whole in the service area, with relatively few incremental per-location costs, e.g., attributable to individual drops. As the A-CAM Methodology describes, "[i]ncumbent wireline carriers often have an obligation to provision new service within a short period of time. As such . . . certain components of wireline networks are typically built and sized to serve all locations."[8] Likewise, in the A-CAM, "a network topology is built that captures the equipment locations and routing required for delivery of voice and broadband services to *an entire service area*."[9]

In sum, the network deployment supported by the A-CAM is designed to be capable of delivering services to the funded footprint, and the specific costs incurred to add a location are de minimis because most costs associated with connecting a location already have been sunk as part of the investment in the network. This comports with the fundamental precept held by incumbent wireline carriers to build networks that are capable of serving their entire funded service area now and into the future.

In light of the above considerations, the Commission should study the impact of actual location discrepancies before deciding what measures are appropriate for A-CAM support recipients that experience location shortfalls.

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[7] *Connect America Fund; ETC Annual Reports and Certifications; Developing a Unified Intercarrier Compensation Regime;* Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3102, para. 34 (2016) (*Rate-of-Return Reform Order*).

[8] A-CAM Methodology at 21, § 4.2.3.2.

[9] *Id.* at § 4.2.3.1 (emphasis supplied).

III. A-CAM SUPPORT RECIPIENTS SHOULD HAVE FLEXIBILITY REGARDING WHEN OR IF TO RAISE LOCATION DISCREPANCY ISSUES

A. The Commission Should Adopt a Flexible Approach for A-CAM Companies to Seek Resolution of Location Discrepancies

In the *Phase II Auction Reconsideration Order*, the Commission provided that within one year after release of the Phase II auction closing public notice, an auction support recipient unable to identify enough actual locations and seeking an adjustment of deployment obligations must submit evidence of the total number of locations it could identify in the eligible areas in the state. The Commission further directed the Bureau to establish the procedures and specifications for the submission of this information.[10] In the *September 2018 PN*, the Bureau proposed to apply the one-year deadline for submission of evidence regarding actual location shortfalls to all evidence ultimately required from Phase II auction support recipients seeking to establish *prima facie* cases for adjustment. The Bureau further proposed to open a window, 14 days before the deadline and ending on the deadline, for participants in the process to submit their evidence.[11]

This formulation is not appropriate for A-CAM support recipients. Rather, A-CAM recipients should have the option to raise location discrepancy issues with the Commission during the term of the A-CAM plan when they are further along in their broadband deployment schedules.

1. The Location Discrepancy Resolution Process Would Be Most Effective with Up-to-Date Information Later in the A-CAM Term

ITTA notes that the *September 2018 PN*'s proposal of a narrow window for filing actual location data at the very end of the one-year period following closure of the Phase II auction was in order to "ensure that a participant's data reflects the most recent facts on the ground and that the participant does not omit new or prospective building developments coming into being

[10] *See id.*

[11] *See September 2018 PN*, 33 FCC Rcd at 8627, paras. 19-20, 22.

toward the end of the one-year time frame for compiling and submitting such evidence."[12] The Bureau understandably seeks a comprehensive and up-to-date accounting of location data at the time of filing the data. It therefore should appreciate the value of a comprehensive and up-to-date accounting of actual locations at any time during the A-CAM buildout term. In fact, the *September 2018 PN*'s emphasis that participants' obligation to correct incomplete location data extends until summation of the 10-year Phase II auction funding term[13] supports the principle that an A-CAM company should have the opportunity to raise location discrepancies during the entirety of the A-CAM buildout term.

There are myriad reasons why this makes sense.

First, locations are bound to change during the 12-year or 10-year buildout term.[14] The national broadband policy goal is universal broadband access by all Americans, in all regions of the nation.[15] Efforts to achieve this goal could be thwarted if by the end of the buildout term the net diminution in unserved locations as a result of A-CAM-supported buildout were negated by the addition of new locations.

What may be even more common in rural areas, however, is the well-documented phenomenon of rural population loss.[16] In addition, severe natural disasters can change—and

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[12] *Id.* at para. 20.

[13] *See id.* at para. 21.

[14] ACAM-I companies that accepted the Commission's revised offer of support of $200/location in return for increased 25/3 Mbps deployment obligations effectively have 12 years to meet their buildout obligations. A-CAM II companies have 10 years to fulfill their company-specific buildout requirements.

[15] *See* 47 U.S.C. §§ 254(b)(2), 1302(b); American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, § (6001)(k)(2)(D), 123 Stat. 115, 516 (2009).

[16] *See, e.g.*, Kenneth Johnson and Daniel Lichter, *Rural Depopulation in a Rapidly Urbanizing America* (Feb. 6, 2019), https://carsey.unh.edu/publication/rural-depopulation (nearly 35 percent of U.S. rural counties are experiencing protracted and significant population loss; 91 percent of depopulating U.S. counties are rural).

have changed—location dynamics in some areas literally overnight.[17] The dynamic nature of where locations actually are relative to what the A-CAM assumed is further heightened by the model having relied on 2011 U.S. Census data as its foundation for location counts.[18] By the time A-CAM II and the vast bulk of A-CAM I deployment obligations are completed at the end of 2028, this underlying data will be nearly two decades old.

There also is the possibility of the Commission adopting measures to more accurately pinpoint where locations are in its broadband mapping proceeding. This includes the Broadband Serviceable Locations Fabric (Fabric).[19] The Fabric "is designed to produce the most accurate, precise data available, and be a flexible solution that is capable of evolving with new data," including the 2020 U.S. Census data.[20] Underscoring both the outdatedness of the U.S. Census data underlying the A-CAM as well as the precision identification of locations that would result from the Fabric, a recent analysis of an initial version of the Fabric, evaluating approximately 120,000 census blocks, found that nearly 30 percent of census blocks have Fabric location counts

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[17] *See, e.g.*, Washington Post, *Hurricane Michael Wipes Out Florida Coastal Community* (Oct. 12, 2018), https://d21rhj7n383afu.cloudfront.net/washpost-production/The_Washington_Post/20181012/5bc07b39e4b0b9509d7d3b14/5bc07b47e4b06c96e32f07dc_1439412357318-vhunw0_t_1539341136759_854_480_1200.mp4 ("the whole town [of Mexico Beach, FL] is gone"); Fox News, *Mexico Beach still in ruins as next hurricane season looms* (May 15, 2019), https://www.foxnews.com/us/mexico-beach-in-ruins-next-hurricane-season-arrives ("We had approximately 2,700 living units in Mexico Beach. We have less than 500 today, and of those 500, some of those are just shells of houses.").

[18] *See* CostQuest Associates, Inc., Connect America Cost Model (A-CAM), Model Methodology, A-CAM version 2.4.0 at 13-14, § 2.2 (rev. May 1, 2018), https://docs.fcc.gov/public/attachments/DOC-350679A1.pdf (A-CAM Methodology); *see also Rate-of-Return Reform Order*, 31 FCC Rcd at 3098, 3103, paras. 25, 39; *Connect America Fund; High-Cost Universal Service Support*, Report and Order, 29 FCC Rcd 3964, 3971, para. 15 (WCB 2014).

[19] *See, e.g.*, Letter from B. Lynn Follansbee et al., Vice President – Law & Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 11-10 and 10-90, at 2 (filed Apr. 12, 2019) (Apr. 12 *Ex Parte*); Letter from B. Lynn Follansbee, Vice President – Policy & Advocacy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 11-10, 10-90, and 19-126, at 2 (filed July 1, 2019) (July 1 *Ex Parte*).

[20] Apr. 12 *Ex Parte* at 4.

higher than U.S. Census data, while over 35 percent had fewer locations. Moreover, there were over 4,000 census blocks where the Fabric found 100 percent more structures than U.S. Census data, and more than 13,000 where the Fabric structure count was between 81% and 100% less.[21] The outcome of future mapping efforts, including the Fabric, could yield more information that would be helpful to A-CAM companies that wish to seek a location adjustment at a later date.

ITTA additionally observes that the audits of the location discrepancy resolution process contemplated in the *September 2018 PN* would rely substantially on performance and outcomes far into the deployment schedule.[22] In this regard, the opportunity for a later A-CAM location discrepancy process with more up-to-date information should reduce the Commission's need to rely on audits to ensure the integrity of the process,[23] and correspondingly avert imposing unnecessary burdens upon regulators and carriers alike.

Further, in a short period of time, formulations of what may properly count as a "location" for deployment obligations purposes may be clarified or evolve to encompass broadband uses that previously had not been viewed as meriting consideration as a "location" for such purposes. To illustrate, merely a year and a half ago, ITTA and others advocated that to help resolve locations discrepancy issues in the Phase II auction context, "the Commission could broaden its definition of locations for purposes of fulfilling deployment obligations. . . . For instance, in the agricultural context there are fixed locations housing facilities that promote

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[21] *See* July 1 *Ex Parte* at 2. This does not impugn the A-CAM, it merely illustrates the shortcomings of the location data that was available at the time the A-CAM was created.

[22] *September 2018 PN*, 33 FCC Rcd at 8629, para. 28 (seeking comment on whether audits should be triggered by "defaulting on deployment obligations *in subsequent years*," "if a participant *frequently misreports* served locations evidence," and "if, *at the end of the support term*, the reported served locations differ significantly from the reported actual locations") (emphases added).

[23] *Cf. id.* at 8629-30, Sec. III.G. (seeking comment on audit process).

"smart ag" practices, and which are reliant on broadband."[24] The Commission demurred.[25] And yet, by the end of 2018, Congress enacted the 2018 Farm Bill, in which it directed the Commission to establish a task force to, among other things, "promote effective policy and regulatory solutions that encourage the adoption of broadband Internet access service on farms and ranches and promote precision agriculture," and to "recommend specific new rules or amendments to existing rules of the Commission that the Commission should issue . . . to promote the rapid, expanded deployment of broadband Internet access service on unserved agricultural land . . ."[26]

Conceptually, the location discrepancy process is akin to a true-up, and in the true-up context the Commission will consider actual data and changed circumstances where necessary to ensure reasonable results and prevent excessive recovery of support from carriers.[27] Permitting A-CAM carriers the option to raise the location discrepancy issue at the point in their buildout term when they can more precisely gauge where actual locations are, as well as accommodate the

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[24] ITTA et al. Jan. 19, 2018 *Ex Parte* at 2 & n.8.

[25] *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1390, para. 27.

[26] Agriculture Improvement Act of 2018, Pub. L. 115-334, 132 Stat. 4490, § 12511(b)(3)(A); *see FCC Announces the Establishment of the Task Force for Reviewing Connectivity and Technology Needs of Precision Agriculture in the United States and Seeks Nominations for Membership*, Public Notice, DA 19-568 (WCB June 17, 2019) (announcing formation of Precision Ag Connectivity Task Force).

[27] *See, e.g., Connect America Fund*, Order, 33 FCC Rcd 12232, 12234, para. 8 (WCB 2018) (waiving high-cost revenue reporting rules to allow reporting of actual revenues rather than forecasted revenues, because the uncertainty of consumer broadband-only demand in the period at issue, along with the subsequent reconsideration of the budget control mechanism, would have resulted in unreasonable true-ups for 2017 Connect America Fund Broadband Loop Support, but "[a]llowing legacy rate-of-return carriers to report the consumer broadband-only rates they actually charged in 2017 . . . will serve the public interest by preventing the excessively large recovery of support from carriers in the form of true-ups"). The Commission routinely conducts true-ups regarding A-CAM support and in other contexts in order to achieve equitable results. *E.g., Wireline Competition Bureau Authorizes 186 Rate-of-Return Companies to Receive an Additional $65.7 Million Annually in Alternative Connect America Cost Model Support to Expand Rural Broadband*, Public Notice, DA 19-349, at 2 (WCB Apr. 29, 2019).

possibility of changed policies regarding what counts as actual locations, should diminish the prospects of a premature downward adjustment of deployment obligations that thwarts the Commission's objective of ensuring that all actual locations are served at the end of the A-CAM term.

2. Conducting Location Discrepancy Resolution Processes Later in the Buildout Term is Especially Appropriate for A-CAM Recipients

There are numerous grounds for finding the A-CAM and Phase II auction contexts distinguishable from each other.[28] First, A-CAM support recipients long have provided service in the areas for which they receive support. Thus, there was no need for the Commission to ensure that A-CAM support recipients scrutinize the service areas for which they would receive support in the same way it needed to do so for auction support recipients in order to prevent defaults that could keep auctioned areas without service for years.[29] And part and parcel of this required heightened scrutiny by Phase II auction applicants was due diligence to identify serviceable locations in the areas on which they bid.[30] Even with such due diligence requirements, the Commission rightfully found that Phase II auction support recipients should be availed of a location discrepancy resolution process.[31] Absent such due diligence requirements,

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[28] *See June 2019 PN* at 2-3.

[29] *See, e.g., Connect America Fund; ETC Annual Reports and Certifications; Rural Broadband Experiments*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 6001, para. 145 (2016) (adopting a forfeiture in the event a Phase II auction applicant defaults before it is authorized to begin receiving support "will impress upon recipients the importance of being prepared to meet all of [the Commission's] requirements for the post-selection review process and emphasize the requirement that they conduct a due diligence review to ensure that they are qualified to participate in the Phase II competitive bidding process and meet its terms and conditions").

[30] *See Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1390, para. 25 (emphasizing that Phase II auction applicants "are required to conduct the necessary due diligence prior to submitting their short-form applications, including identifying locations they will serve within the eligible areas, so that they can certify that they will be able to meet the relevant public interest obligations when they submit their applications").

[31] *See id.* at 1389, paras. 23-25.

it is understandable if A-CAM support recipients are caught more off-guard by locations discrepancies.

Relatedly, Phase II auction bidders had "the advantage of choosing which eligible census blocks to include in their bids."[32] They also had control over the amounts that they bid to serve the census blocks they chose to include in their bids. A-CAM I and A-CAM II recipients, however, did not have the benefit of such flexibility. A-CAM I recipients have had opportunities to accept additional support in exchange for additional deployment obligations. But the original offers of A-CAM I and II support, as well as the incremental revised A-CAM I offers, all have been "take it or leave it," with funding levels and associated deployment obligations dictated by the A-CAM. Moreover, A-CAM offers have entailed state-level elections, and have been designed specifically to inhibit the freedom to pick and choose among eligible census blocks.[33]

An additional distinction is that Phase II auction support recipients are required to complete buildout within six years, while A-CAM I companies have 12 years and A-CAM II support recipients have 10 years to do so. The additional four to six year deployment timetable for A-CAM support recipients means that circumstances are more prone to change during the deployment lifespan, as discussed above. Moreover, Phase II auction support recipients are required to be even more exacting in their initial network engineering plans because they have a more compressed schedule in which to fulfill them.

[32] *Id.* at 1392, para. 32.

[33] *Rate-of-Return Reform Order*, 31 FCC Rcd at 3113, para. 65 (requiring a state-level election "prevents rate-of-return carriers from cherry-picking the study areas in a state where model support is greater than legacy support, and retaining legacy support in those study areas where legacy support is greater").

B. Should the Commission Adopt a Multi-Step Location Discrepancy Resolution Process for the A-CAM Programs, A-CAM Support Recipients Should be Afforded Adequate Time to Respond to Stakeholders' Attempts to Identify Overlooked Actual Locations

The *September 2018 PN* proposed that within 60 days of the deadline for filing actual location data, the Bureau would announce *prima facie* cases for adjustment of deployment obligations, relevant stakeholders would then have 90 days to rebut the propriety of adjustments, and participants, in turn, would have 15 days to reply. The *September 2018 PN* sought comment on whether these proposed timeframes for the Phase II auction location discrepancy resolution process "adequately serve [the Commission's] goal of providing a meaningful opportunity for challenge," while concluding the process in a reasonable timeframe.[34] ITTA generally endorses this timeline in the Phase II auction context, but urges the Bureau to extend the reply period to 30 days in order to fulfill the Bureau's avowed goal of an adequate opportunity for participants to contest data and otherwise participate in the location discrepancy resolution process.[35] ITTA does not believe such a multi-step location discrepancy resolution process is necessary for the A-CAM I and II programs. However, should the Commission decide otherwise, it should likewise extend the reply period to 30 days.

The very nature of the location discrepancy resolution process involves a relevant stakeholder refuting the data, which it has 90 days to do. To the extent that such rebuttal sends the participant "back to the drawing board" in assessing the disputed data, 15 days pales in comparison to the 90 that its putative opponent had to present its case. Providing 30 days for a reply acknowledges the presumably more narrow set of disputed data to which the participant is replying as compared to the set the relevant stakeholder had to evaluate, but also recognizes that

[34] *September 2018 PN*, 33 FCC Rcd at 8627, para. 22.

[35] *See* Comments of ITTA, WC Docket No. 10-90, at 4-5 (Oct. 29, 2018) (*ITTA September 2018 PN Comments*); *September 2018 PN*, 33 FCC Rcd at 8627, para. 22.

the participant very likely would need to send personnel to the disputed sites, compile analysis results, and have a reasonable opportunity to draft a compelling argument in reply. Depending on how many locations are disputed, 15 days simply may not afford participants a fair opportunity to present their best cases. The extra 15 days would give participants a fairer opportunity to prepare a well-considered reply while having a *de minimis* effect on conclusion of the process.

IV. THE COMMISSION SHOULD CLARIFY ITS DEFINITION OF WHAT COUNTS AS AN ACTUAL LOCATION

The *September 2018 PN* sought comment on how the Bureau should define an actual location for purposes of resolving location discrepancies relative to the number of deployable locations specified by the Connect America Cost Model (CAM).[36] The Commission should clarify that both locations that are unfinished at the start of the A-CAM support term but later completed and connectivity on farms and ranches count as actual locations.

A. Locations That are Unfinished At the Beginning of the A-CAM Support Term But Later Completed Should Be Counted As Actual Locations

While noting that, "[i]n general, CAF support recipients cannot report unfinished residential or business locations or ongoing or future real estate developments as served locations in satisfaction of build-out requirements,"[37] the *September 2018 PN* acknowledged that auction deployment obligations cover a 10-year support term,[38] and therefore sought comment on whether "prospective developments that have a reasonable certainty of coming into existence within the support term" should be counted as actual locations.[39] Not only does ITTA reiterate

[36] *See September 2018 PN*, 33 FCC Rcd at 8623, para. 8.

[37] *Id.* at 8624, para. 9.

[38] In addition, subject to certain deployment milestones, Phase II auction support recipients have six years to complete construction and commercially offer service meeting the relevant public interest obligations. *See Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1388, para. 21.

[39] *September 2018 PN*, 33 FCC Rcd at 8624, para. 9.

that they should in the Phase II auction context,[40] but the merits are at least equally compelling that they should in the A-CAM context.

While ITTA can respect the Commission's desire to exercise caution in ensuring that scarce federal universal service funds are devoted to buildout to real housing units or small businesses served with mass market services,[41] not counting residential or business locations that are unfinished at the beginning of the support term but later completed will only serve to perpetuate rural Americans lacking access to broadband, in contravention of national broadband policy goals and the public interest.

B. Actual Locations Include Connectivity on Farms and Ranches

As discussed above, in the *Phase II Auction Reconsideration Order*, the Commission declined to specifically encompass fixed locations housing facilities that use broadband to promote "smart ag" practices in its definition of an eligible actual location.[42] However, less than a year later, Congress directed the Commission in the 2018 Farm Bill to establish a task force to encourage the adoption of broadband on farms and ranches and promote precision agriculture, and to recommend specific new rules or amendments that the Commission should issue to promote the rapid, expanded deployment of broadband on unserved agricultural land. The Commission is currently in the midst of standing up the Precision Ag Connectivity Task Force.

The nexus between broadband, and agricultural productivity and associated national economic benefits, is well documented. As enunciated by the Interagency Task Force on Agriculture and Rural Prosperity:

> Connectivity is especially vital for the original "Made in America" industry – agriculture – to increase farm productivity to feed the world. . . . [I]nnovative

[40] *See* ITTA *September 2018 PN* Comments at 2-3.

[41] *See September 2018 PN*, 33 FCC Rcd at 8623, para. 8; *Phase II Auction Reconsideration Order*, 33 FCC Rcd at 1390, para. 27.

[42] *See supra* Section III.A.1.

> technologies such as precision agriculture can ensure American farms reach the necessary levels of productivity. *Such methods require every part of the farm to be connected to the worldwide web, not just the farmhouse*.[43]

Moreover, a recent Department of Agriculture report found that deployment of both broadband e-Connectivity and Next Generation Precision Agriculture Technology on farms and ranches throughout the U.S. could result in at least $47 billion in national economic benefits each year, with "at least $18 billion in annual economic benefits that only high-speed, reliable internet can provide."[44]

In order to fulfill Congress' direction to encourage the adoption of broadband on farms and ranches, thereby promoting precision agriculture, and to promote the rapid, expanded deployment of broadband on unserved agricultural land, the Commission should clarify that all sites on farms and ranches that leverage or can leverage broadband to enhance farm or ranch operations qualify as actual locations.[45] The Commission need not, and should not, wait for recommendations from the Precision Ag Connectivity Task Force to take action to promote expanded deployment of broadband to foster smart ag uses.

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[43] U.S.D.A., Report to the President of the United States from the Task Force on Agriculture and Rural Prosperity at 18 (2018), https://www.usda.gov/sites/default/files/documents/rural-prosperity-report.pdf.

[44] Press Release, U.S.D.A., USDA Releases Report on Rural Broadband and Benefits of Next Generation Precision Agriculture (Apr. 30, 2019), https://www.usda.gov/media/press-releases/2019/04/30/usda-releases-report-rural-broadband-and-benefits-next-generation.

[45] To illustrate, a large dairy farm, operated under the aegis of one business entity, may have compelling needs and uses for connectivity to several different facilities in disparate locations. To the extent that some of the largest farms or ranches can span many square miles, the costs of deployment to different farming facilities, even where under common ownership, easily can replicate, if not exceed, the costs of deployment to different residential structures in rural areas. *See, e.g.*, Jacob Bunge, *Supersized Family Farms are Gobbling Up American Agriculture*, Wall St. J., Oct. 23, 2017, https://www.wsj.com/articles/the-family-farm-bulks-up-1508781895. The average very large farm exceeds three square miles. *See, e.g.*, Mary Dunckel, *Small, Medium, Large – Does Farm Size Really Matter?* (Mich. State Univ. Extension Newsletter), Nov. 14, 2013, https://www.canr.msu.edu/news/small_medium_large_does_farm_size_really_matter (reporting very large farm average acreage as 2,086).

V. THE COMMISSION SHOULD NOT IMPOSE PENALTIES FOR GOOD FAITH LOCATION SHORTFALLS

Section 54.320(d)(2) of the Commission's rules provides for drastic financial penalties where a carrier fails to fulfill its final deployment obligations.[46] ITTA has heard expressions of concern from numerous carriers that they may be subject to these consequences when their failure to fulfill their final deployment obligations stems from location discrepancies that are beyond their control. In the *Phase II Reconsideration Order*, the Commission "agree[d] that support recipients should not be penalized if the actual facts on the ground differ from the [model's] estimates."[47] Section 54.302(d)(2) was adopted for a different purpose, i.e. to deter carriers "from deciding to return their support rather than build out to more than a de minimis number of locations."[48] Therefore, it is inapposite in the context of location discrepancies. The Commission should clarify that Section 54.302(d)(2) does not apply to carriers that fail to meet final buildout obligations due to a location discrepancy.

[46] 47 CFR § 54.320(d)(2).

[47] *Phase II Reconsideration Order*, 33 FCC Rcd at 1390, para. 25.

[48] *December 2014 Connect America Order*, 29 FCC Rcd at 15697, para. 148.

VI. CONCLUSION

ITTA appreciates the Commission's continued recognition that there frequently are disparities between the number of model-funded locations and actual locations, as well as its acknowledgement via the *June 2019 PN* that different location discrepancy resolution procedures may be appropriate for A-CAM support recipients in various circumstances. These different procedures should include, at a minimum, significantly greater flexibility as to when A-CAM support recipients may bring location discrepancies to the Commission's attention, and a different approach for deployment shortfalls attributable to location discrepancies.

Respectfully submitted,

By: /s/ Genevieve Morelli

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